JERRY D. GROVER D.B.A. KINGSTON RUST DEVELOPMENT
(GROVER IV)

IBLA 99-10 Decided December 22, 2003

Appeal from a decision of the Utah State Office, Bureau of Land Management, declaring unpatented oil shale mining claims for which patent applications are pending forfeited for failure to pay claim rental fees for the 1993 and 1994 assessment years. UMC 115655-115659, UTU 66062, 66063.

Affirmed.

1. Energy Policy Act of 1992: Generally--Energy Policy Act of 1992: Oil Shale: Mining Claims: Rental or Claim Maintenance Fees--Oil Shale: Mining Claims

The $100 claim rental fee established by the Interior Department and Related Agencies Appropriations Act of 1993 (Rental Fee Act), Pub. L. No. 102-381, 106 Stat. 1378-79 (Oct. 5, 1992), applied to all unpatented mining claims, mill sites, and tunnel sites. As to oil shale claims, the Rental Fee Act applied only to those oil shale claims for which patent applications had been filed and accepted for processing by the Department by October 24, 1992, the date the Energy Policy Act of 1992, 30 U.S.C. § 242 (2000), was enacted, for which no first half final certificate has been issued. Such claims are to be maintained in accordance with the requirements of applicable law prior to the enactment of the Energy Policy Act until such time as patent may be issued. The Rental Fee Act required payment of the $100 fee for each claim for the 1993 and 1994 assessment years on or before August 31, 1993, to avoid conclusive abandonment of the claims.

2. Energy Policy Act of 1992: Generally--Energy Policy Act of 1992: Oil Shale: Mining Claims: Rental or Claim Maintenance Fees--Oil Shale: Mining Claims

   Oil shale claims which are subject to the provisions of the Energy Policy Act, 30 U.S.C. § 242(c)(1) and (2) (2000), must be maintained in accordance with the requirements of applicable law before the EPA was enacted.

3. Energy Policy Act of 1992: Generally--Energy Policy Act of 1992: Oil Shale: Mining Claims: Rental or Claim Maintenance Fees--Oil Shale: Mining Claims

   Under the Rental Fee Act, August 31, 1993, was the last date a claim holder could avoid conclusive abandonment of his unpatented mining claims by paying the rental fee. That deadline is to be distinguished from the obligation to pay the rental fees, which was established as of the effective date of the Rental Fee Act. Subsection (c)(3) of the Energy Policy Act plainly provides that claim holders subject to subsection (c)(1) and (2) are to continue to maintain their claims in accordance with the requirements of applicable law. Such claim holders were therefore required to pay rental fees for the 1993 and 1994 assessment years on or before August 31, 1993, to avoid the conclusive presumption of abandonment of their oil shale claims.

4. Energy Policy Act of 1992: Generally--Energy Policy Act of 1992: Oil Shale: Mining Claims: Rental or Claim Maintenance Fees--Oil Shale: Mining Claims

   The validity of the Rental Fee Act and the Energy Policy Act does not depend on the validity of the regulations adopted by the Department to implement them. A regulation cannot create authority where none has been conferred by Congress, and where Congress has enacted a statute, a regulation cannot exceed, diminish, or negate the authority thus granted.

APPEARANCES: Jerry D. Grover, Jr., Provo, Utah, pro se; John W. Steiger, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Salt Lake City, Utah, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE PRICE

Jerry D. Grover d.b.a. Kingston Rust Development has appealed the August 28, 1998, decision of the Utah State Office, Bureau of Land Management (BLM) declaring the Vac 1, 2, 5, 6, and 8 unpatented oil shale mining claims (UMC 115655, UMC 115656, UMC 115657, UMC 115658, UMC 115659), forfeited for failure to pay claim rental and maintenance fees after notice and opportunity to do so. Mineral patent applications UTU 66062 and UTU 66063 were filed on September 25, 1989, [1/] by Grover's predecessor, Production Industries Inc. (PIC) [2/] The Department has not issued first half final certificates for the patent applications.

These claims were at issue in Jerry D. Grover d.b.a. Kingston Rust Development (Grover I), 139 IBLA 178 (1997). In that case, we reversed a BLM decision voiding the claims for failure to pay the $550 annual oil shale claim maintenance fee established by the Energy Policy Act of 1992 (EPA), 30 U.S.C. § 242(e)(2) (2000). On August 4, 1997, BLM issued a decision to PIC voiding the claims for failure to pay rental and maintenance fees for fiscal years 1993-1996. Grover appealed that decision, which was docketed as IBLA 97-530. On BLM's motion, we vacated the August 4, 1997, decision and remanded the case for further action. The decision now before us is the culmination of that remand. See Decision at 2.

[1/] According to BLM's decision, "[t]he land description for UMC 115655 is T. 11 S., R. 25 E., SLM [Salt Lake Meridian], Sec. 28: SE ¼. Patent application UTU 66063 covers only the E½SE¼ of Sec. 28. The land description for UMC 115656 is T. 11 S., R. 25 E., SLM, Sec. 27: SW¼. The land description for UMC 115657 is T. 11 S., R. 25 E., SLM, Sec. 33: NE¼. Patent application UTU 66063 covers only the E½NE¼. Finally, the land description for UMC 115658 is T. 11 S., R. 25 E., SLM, Sec. 27: SE. [Sic.] Patent application UTU 66063 covers only the S½SE¼ and NE¼SE¼ of Sec. 27. Consequently, UTU 66063 covers only half of UMC 115655, half of UMC 115656, half of UMC 115657, and three-quarters of UMC 115658." (Decision at 1.) The decision states that patent application UTU 66062 includes all of UMC 115659, but did not provide the land description. Id., n. 1. The claims were located in 1918. Id. at 2.

[2/] Production Industries conveyed a 60 percent interest to Grover in an August 1992 deed that was recorded in Uintah County, Utah.

BLM states that on January 21, 1921, a portion of the land embraced by UMC 115656 and UMC 115658 [3/] was conveyed out of Federal ownership to a private individual, subject to the mining claims. [4/]

As to the land still owned by the United States, BLM determined that PIC, the claim holder of record, was required by provisions of the Interior Department and Related Agencies Appropriations Act of 1993 (Rental Fee Act), Pub. L. No. 102-381, 106 Stat. 1378-79 (Oct. 5, 1992), to pay the annual $100 per claim rental fee for the 1993 and 1994 assessment years. By decision [5/] dated March 4, 1998, BLM allowed PIC 30 additional days to pay the 1993 and 1994 rental fees, and maintenance fees for the years 1995 through 1998. PIC did not respond to the March 1998 decision, and on August 28, 1998, BLM determined the claims were conclusively deemed abandoned for failure to pay the 1993 and 1994 fees on or before August 31, 1993. (Decision at 2, n. 3.)

In his Statement of Reasons (SOR), Grover advances five arguments in support of his position that rental fees are not applicable to his oil shale claims. His first argument is that, assuming the rental fees apply, there was no requirement to pay them during the pendency of the appeal in Grover I. (SOR at 1-3.) Second, he contends that the rental fee does not apply to his claims because the Code of Federal Regulations (CFR) does not, and did not, impose such fees. In support, he states that the CFR in effect from July 15, 1993, to August 30, 1994, did contain a provision imposing the fee on oil shale claims (SOR at 3-4), but has contained no such provision since August 30, 1994 (SOR at 4). Further, Grover argues that the Energy Policy Act of 1992 , 30 U.S.C. § 242 (2000), "specifies subject claims would be governed only by laws in effect prior to enactment and subsequently promulgated in the Code of Federal Regulations, not the current $100 maintenance fee." (SOR at 4.) More particularly, Grover states that the current annual maintenance fee was established by the Omnibus Budget Reconciliation Act of 1993, as amended (Maintenance Fee Act), Pub. L. No. 103-66, 107 Stat. 405-06 (August 10, 1993); Pub. L. 105-240, 112 Stat. 1570 (September 25, 1998); Pub. L. No. 105-277, 112

[3/] The land that was conveyed was the N½SW¼ and NW¼SE¼ of Sec. 27, T. 11 S., R. 25 E., SLM. (Decision at 2.)

[4/] The decision noted that the rental fees would have accrued even if it were argued that the United States had retained jurisdiction over the land (Decision at 2, n. 4). We assume from this assertion that the United States did not retain the mineral estate when the land was conveyed.

[5/] Counsel for BLM refers to the Mar. 4, 1998, communication as a "letter." (Answer at 3.) For our purposes, the document's appellation is unimportant.

Stat. 2681-235 (October 21, 1998); Pub. L. No. 107-63, 115 Stat. 418 (November 5, 2001); 30 U.S.C. § 28f (2000), which was enacted after the EPA. [6/]

In its Answer, BLM argues that the effect of a pending appeal is not implicated,because the voidance decision was not issued until May 26, 1994, after August 31, 1993, the date the rental fees were due. (Answer at 5.) Second, with respect to the CFR, BLM argues that "[r]egardless of what these sources provide or indicate, it is fundamental law that they cannot supersede or contradict clear congressional mandates." (Answer at 5.) Lastly, BLM dismisses the fact that the EPA was enacted after the Maintenance Fee Act, because the fees at issue derive from the Rental Fee Act.

Grover filed a Reply in which he taunts BLM for its contradictory positions on the applicability of the fees imposed under the 1993 Rental Fee Act, the EPA, and the Maintenance Fee Act to oil shale claims. Otherwise, the Reply clarifies one argument raised in the SOR. Grover argues that the regulations clearly state that the $100 rental and maintenance fees under the Rental Fee and Maintenance Fee Acts do not apply to oil shale claims, because the regulations state that oil shale claims are subject to the $550 maintenance fee set forth in the EPA. Grover argues that revised regulations have not been promulgated in response to the Board's decision in Grover I, 139 IBLA 178, and further argues that we held that the $550 fee is not applicable to oil shale claims for which patent applications had been filed and accepted for processing by the Department by October 24, 1992. Citing the Administrative Procedure Act, 5 U.S.C. §§ 551(5) and 553 (2000), Grover contends that there is no lawful authority by which BLM can now demand the fees.

We begin with the Rental Fee Act, which states:

(1) effective on the date of enactment, October 5, 1992;

(2) each claimant shall, except as provided otherwise by the 1993 Rental Fee Act, pay a claim rental fee of $100;

[6/] The Maintenance Fee Act established an annual fee of $100 for unpatented mining claims, mill sites, and tunnel sites, to be due on or before Aug. 31 of each year, in place of the assessment work requirement of the mining law. 30 U.S.C. § 28b (2000). The Maintenance Fee Act expressly provided that it did not apply to "any oil shale claims for which a fee is required to be paid under section 2411(e)(2) of the [EPA, codified as 30 U.S.C. § 242(e) (2000)]." 30 U.S.C. § 28f(a) (2000). As we determined in Grover I and Jerry D. Grover d.b.a. Kingston Rust Development (Grover III), 160 IBLA 234 (2003), unpatented oil shale claims for which a patent application was pending on Oct. 24, 1992, the effective date of the EPA, are not subject to the $550 fee per claim per year it established.

(3) for each unpatented mining claim, mill, or tunnel site on federally owned lands;

(4) for the assessment year ending at noon on September 1, 1993 (the 1993 assessment year), and for the assessment year beginning at noon on September 1, 1993 (the 1994 assessment year);

(5) such claim rental fees to replace the assessment work requirement contained in the Mining Law of 1872, 30 U.S.C. §§ 28-28e (2000), and the filing requirements of sec. 314(a) and (c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) and (c) (2000)

(6) and shall be paid on or before August 31, 1993;

(7) or the claim "shall conclusively constitute an abandonment of the unpatented mining claim, mill or tunnel site by the claimant.

[1] Thus, as the holder of unpatented oil shale mining claims located on public lands and initiated pursuant to the Mining Law of 1872, on October 5, 1992, Grover or his predecessor clearly was subject to the provisions of the Rental Fee Act. It follows, therefore, that he or his predecessor was required to pay the claim rental fees for the 1993 and 1994 assessment years on or before August 31, 1993, and when the fees were not paid, the claims were deemed conclusively abandoned. [7/] Although Congress soon thereafter enacted further legislation affecting oil shale claims, the fact remains that the requirements of the Rental Fee Act attached effective October 5, 1992, and unless we are able to find that a subsequent statute or provision explicitly relieved holders of unpatented mining claims of the obligations imposed by that Act, or specified different treatment for oil shale claims, Grover was required to pay claim rental fees for the 1993 and 1994 assessment years on or before August 31, 1993, pursuant to the Rental Fee Act.

[2] The next legislation enacted by Congress was the EPA, 30 U.S.C. § 242 (2000), which we have examined in a series of cases involving Grover or his predecessor: Grover III, 160 IBLA 234; Jerry Grover d.b.a. Kingston Rust Development (Grover II), 141 IBLA 321 (1997); Grover I, 139 IBLA 178; and Production Industries Corp., 138 IBLA 183 (1997). Because these are unpatented oil

[7/] For that reason, BLM's Mar. 4, 1998, letter or decision notifying PIC of the accrued fees and allowing 30 additional days to pay was a nullity, because neither BLM nor this Board has the authority to excuse lack of compliance or extend the time for compliance with the Rental Fee Act. Howard J. Hunt, 147 IBLA 381, 384 (1999); Daniel D. Koby, 139 IBLA 131, 137 (1997); Lee H. And Goldie E. Rice, 128 IBLA 137, 141 (1994).

shale claims for which patent applications had been filed and accepted for processing by the Department by October 24, 1992, the effective date of the EPA, they are subject to the provisions of 30 U.S.C. § 242(c)(1) and (2) (2000). After October 24, 1992, so long as the patent applications are pending before the Department, Grover is required to maintain them "in accordance with the requirements of applicable law prior to enactment of [the EPA]." 30 U.S.C. § 242(c)(3) (2000); and see Grover I, 139 IBLA at 183-84, and Grover III, 160 IBLA 251-55, for, among other things, the complete analysis of subsection (c) of the EPA. As we have shown above, applicable law included the Rental Fee Act and the claim rental fees it imposed on all unpatented mining claims, mill sites, and tunnel sites.

[3] It is not clear whether Grover intends to suggest that the EPA relieved claim holders of the rental fee obligation because it was enacted before the August 31, 1993, deadline for payment had passed. To the extent any such contention may be implicit in his arguments, we observe only that August 31, 1993, was merely the last date a claim holder could avoid conclusive abandonment of his claims by paying the rental fees. The obligation to pay the fees arose on August 10, 1993. More to the point, however, such a suggestion is wholly inconsistent with subsection (c)(2) of the EPA, which plainly provides that oil shale claim holders subject to subsections (c)(1) and (2) will continue to maintain their claims in accordance with the requirements of applicable law, and did so without caveat or reservation. Accordingly, we find that Grover was required to pay rental fees on or before August 31, 1993, for the 1993 and 1994 assessment years to avoid conclusive abandonment of the claims, and that the obligation was undisturbed by enactment of the EPA.

[4] Despite these statutes, Grover argues that the Department's regulations did not specify that the $100 rental fee applied to oil shale, and indeed, specified the opposite. He correctly observes that the regulations actually stated a requirement that is contrary to BLM's present position. Thus, 43 CFR3833.1-5 excepted claims identified in 43 CFR 3833.1-5(e) from the requirement to pay the $100 rental fee imposed by the Rental Fee Act, by stating the owners of oil shale claims "shall pay the $550 annual rental fee to the proper BLM State Office on or before December 30." Contrary to Grover's assertions, the validity of the Rental Fee Act and the EPA does not depend on the validity of the regulations adopted by the Department to implement them. A regulation cannot create authority were none has been conferred by Congress, and where Congress has enacted a statute, a regulation cannot exceed, diminish, or negate the authority thus granted.

Finally, Grover's assertion that there was no requirement to pay the fees imposed by the Rental Fee Act during the pendency of the appeal in Grover I (SOR at 1-3) can be dealt with summarily. Although these claims were before us in Grover I, as BLM notes, the decision Grover appealed there was not issued until May 26, 1994,

well after the payment deadline of August 31, 1993, had passed. Having failed to pay the rental fees for the claims, pursuant to Congress' mandate they were deemed conclusively abandoned, a consequence that required no action or proceeding on BLM's part to effectuate. BLM's decision merely declared the facts and result directed by Congress.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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T. Britt Price
Administrative Judge

I concur:

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James F. Roberts
Administrative Judge